IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12981 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANUBHAI U PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR DF AMIN for Petitioner(s) : 1,
MR LR PUJARI, ASSTT.GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 3,
None for Respondent(s) : 4,
MR HM JADEJA for Respondent(s) : 4.2.1, 4.2.2,4.2.3

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 28/03/2007

ORAL JUDGMENT

1. Shri D.F. Amin, learned counsel for the petitioner, Shri L.R. Pujari, learned AGP for the respondents no. 1 and 2; Shri

H.M. Jadeja, learned counsel for the respondents no. 4.1 to 4.3.

2. Present appears to be a case where certain land belonging to the present respondent no.3 Trust was declared surplus, the said order was not challenged by anybody and attained finality. The Government issued notice to the respondent no.3 to exercise its option and surrender land which it so desired. But the respondent no.3 did not exercise its choice and option, therefore, the Government took possession of 12 Acres and 6 Gunthas of land from Block No. 460 admeasuring 4 Acres and 36 Gunthas and some other land. After taking possession, the Government, under the provisions of the Act and the Circulars decided to allot 4 Acres and 6 Gunthas of land in favour of the respondent no.4 [since deceased]. The order of allotment made in favour of the respondent no.4 was not challenged by the petitioner, but in fact, he challenged the order directing the land to be excess on the ground that 36 Gunthas land was used and utilized by the village people as cremation ground and as the said land was not agricultural land, it could not be declared surplus. The Deputy Collector, [Land Reforms], Appeals, in Ceiling Appeal No. 1/91 vide his order dated 31.12.92 held that 36 Gunthas of land could not be allotted in favour of the respondent no.4. He accordingly directed that in view of the use of the land, the land could not be allotted.

3. The State Government being aggrieved by the said order filed revision application No.TEN.B.E.176/93 which was allowed by Gujarat Revenue Tribunal vide order dated 30th August, 1994.

4. The Tribunal observed that the Deputy Collector had no authority to direct deletion of 36 Gunthas of land on the premise that it was used as cremation ground and also held that the Deputy collector could not direct that possession of the said 36 Gunthas land be taken back from the respondent no.4 and be handed over to the Panchayat.

5. The Tribunal, after observing so, allowed the revision petition, therefore, the petitioner is before this Court.

6. It is to be seen that the Mamlatdar cum ALT had passed its order in Ceiling Case No. 2/76 on 29.11.84 and the appeal against the said order came to be filed in the year 1991, that is, almost after period of six years. It appears that the petitioner is not aggrieved by the order passed by the Ceiling authorities, but in fact is aggrieved by the allotment of 36 Gunthas land in favour of the respondent no.4. From the records, it would appear that there was a dispute between the parties that the land was used as cremation ground or not. From the order passed by the Deputy Collector, it appears that the land was used by the village people as cremation ground.

7. If the Panchayat is aggrieved by the allotment of 36 Gunthas

land [used as cremation ground], then,it is required to challenge the order of allotment and not the order passed against the respondent no.3 declaring his land to be surplus. The appeal filed by the present petitioner was misconceived and the Deputy Collector could not interfere in the said matter.

8. I accordingly set aside the order passed by the Deputy Collector and the order passed by the Revenue Tribunal, however, I permit the petitioner Panchayat to make appropriate representation before the appropriate Government for cancellation of the allotment of 36 gunthas land and allotment of the said land in favour of the Panchayat.
9. The petition is accordingly disposed of. Rule is discharged accordingly. Interim relief, if any, is vacated. No costs.

[R.S. GARG, J.]

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